Supreme Court, U.S.
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No. 99-949

In The

Supreme Court of the United States

KARL L. DAHLSTROM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR THE PETITIONER IN REPLY

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Pro se

7pp

QUESTION PRESENTED FOR REVIEW

In the illegal search and seizure of documents through criminal trespass and burglary by private persons, does the immediate presence of a Law Officer unlawfully on the private premises of defendant create a co-conspiracy between the private persons and Law Officer that constitutes a Fourth Amendment suppression of evidence under the United States Constitution.

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BRIEF FOR THE PETITIONER IN REPLY

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 180 F.3d 677.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 1999. The petition for a writ of certiorari was filed on October 7, 1999. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted. Pet. App. 1a-18a.

The government in Opposition Brief failed to include important critical facts in this case. First, the same employees attempted to illegally remove property and documents two (2) days before the break-in on May 11, 1992 and were denied access. This is the reason they conspired with the Deputy Sheriff to attempt and conduct the illegal search and seizure again on May 11, 1992. From testimony at trial, it was determined that the employees had no authority from the board of Directors or anyone else who had authority to remove any property or documents from the College Station facility.

The Deputy Sheriff and employees committed criminal trespass and burglary with their persons and vehicles. Not only did they enter the immediate curtilage of the petitioner's private office property, but the Deputy Sheriff and employees entered the private office building of the petitioner as admitted by the government. U.S.A. p.3, l. 35. The government stated in their opposition brief, "The Sheriff Deputy . . . stayed about eight feet away, *in a hallway* when the employees were removing property . . . " (emphasis added). To enter one of the offices, the door was opened by the employees by literally breaking off the door jam with the acquiescence of the Deputy Sheriff. The employees and Deputy Sheriff entered a fenced property through a six (6) foot chain link fence with a locked gate. On the morning of May 11, 1992, the gate was half open. The employees did remove the property from private offices, not ISI offices on May 11, 1992. These offices were the private offices of Karl L. Dahlstrom, Petitioner and were *not* open to the public. Also, the employees removed private personal property of the Petitioner that was used in the investigation and trial of this case.

On or about May 11, 1992, Petitioner was the largest shareholder in ISI, a principal and contractor. Since there was a legal dispute as to whether the new board of directors had authority, the previous board members comprised of the Petitioner and his daughter would have the actual authority to act for ISI.

ARGUMENT

The government fails to acknowledge a critical element in most of the cases cited in opposition, pages 6-8 of their brief. None of those cases involved illegal trespass *and* burglary. In *United States v. Cleveland*, 38 F.3d 1092 (9th Cir. 1994), for example, the Lake Oswego police detective waited in a parked car approximately one block away. The detective did not unlawfully trespass on the private property. Also, the private person had the authority to enter the property. Both of those conditions are opposite in this instant case. *Cleveland, supra* distinguished *United States v. Reed*, 15 F.3d 928 at 931-32 (9th Cir. 1994), where manager rummaged unlawfully through defendant's property while police watched while all parties were illegally trespassing in the room. Also, this instant case has significantly greater official involvement in the private search **and** seizure issue presented before this Court in that the seized documents are the same as the documents used in petitioner's trial.

In *Dahlstrom*, the petitioner knew that the officer demanded illegal entry into the private office building by his illegal actions concerning Robert Frenza where he ordered Frenza to open the trunk and the briefcase with no legal basis. What recourse does an unarmed citizen have when an out-of-control officer stands very close with his hand on his loaded revolver? The Deputy Sheriff did not have to speak verbally to Petitioner. His actions, body language, gestures and demeanor spoke clearly to Petitioner; he was there to make sure the employees did and retrieved what they wanted. This constitutes more than "a mere peace-keeping by stander" or "merely to prevent trouble" situation in this case.

The government continues to argue that this Court did not review the Court of Appeals' holding that there was sufficient evidence of a conspiracy in *Soldal v. Cook County,* 586 U.S. 56 (1992) at 60 n. 6. At least by inference this court agreed with the Seventh Circuit Court. Several other circuit courts agree that there is a conspiracy between the private persons and law enforcement officers under the conditions and facts of this case. If the government is arguing that the Fifth Circuit is not bound by these other circuits, then they have missed the principles set forth by this Court concerning the Fourth Amendment that other circuits have used. The conspiracy here warrants an automatic ruling of an illegal search and seizure. The criminal trespass of the law enforcement officer make them all co-conspirators in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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